

In this action, Plaintiff Sonia Wendel alleges sex discrimination by her former employer, Defendant Iowa Department of Corrections, in violation of both federal and state civil rights statutes. (Doc. no. 1). Presently before the Court is a motion by Defendant to dismiss Plaintiff's Count Two -- the state law cause of action brought pursuant to the Iowa Civil Rights Act (ICRA), chapter 216 of the Iowa Code. (Doc. no. 3). Defendant contends that the Eleventh Amendment to the United States Constitution bars Plaintiff's pursuit of her state-law claim under the ICRA in federal court. If correct, this Court lacks subject matter jurisdiction over Plaintiff's state-law claim and Defendant's motion must be granted. See *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 121 (1983) ("A federal court must examine each claim in a case to see if the court's jurisdiction over that claim is barred by the Eleventh

Amendment.”).

The Eleventh Amendment provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens of any Foreign State.

U.S. Const. amend XI. While the Amendment literally bars only suits against states by non-residents, it is now well-established that, absent a waiver, the Eleventh

Amendment prohibits suits against a state by that state’s residents as well.

Pennhurst, 465 U.S. at 100; *Thomas v. FAG Bearings Corp.*, 50 F.3d 502, 504-05

(8th Cir. 1995); *Williams v. Missouri*, 973 F.2d 599, 599-600 (8th Cir. 1992) (“The

Eleventh Amendment bars suits against a State by citizens of that same State in

federal court.”) (citation omitted). *See also Kane v. State of Iowa Dept. of Human*

Servs., 955 F. Supp. 1117, 1125 n.5 (N.D. Iowa 1997) (discussing academic

criticism of expansion of Eleventh Amendment beyond its literal terms and

countervailing principle of stare decisis as pertains to this issue).¹ Thus, Plaintiff’s

¹ In other respects, however, the reach of the Eleventh Amendment has been judicially tempered. Although the Amendment’s proscription purports to extend to “any suit in law or equity,” courts have construed the Amendment to permit federal jurisdiction over suits against state officials where the relief sought is injunctive or prospective. *Thomas*, 50 F.3d at 505 n.7 (citing *Edelman v. Jordan*, 415 U.S. 651, 663-64 (1974)). In this case, however, the equitable relief exception is of no assistance to Plaintiff because she has sued only a state agency, not any state official. *See, e.g., Merrill Lynch, Pierce, Fenner and Smith, Inc. v. Nixon*, 210 F.3d

state-law claim against the Iowa Department of Corrections may be maintained in federal court only if Iowa has waived its immunity and consented to suit in a federal venue. *Thomas*, 50 F.3d at 505.

“As a general matter, only unmistakable and explicit waiver by the state itself qualifies as a waiver of Eleventh Amendment immunity.” *Id.* at 506 (citations omitted). “For a state statute to constitute a waiver it ‘must specify the State’s intention to subject itself to suit in federal court.’” *Angela R. by Hesselbein v. Clinton*, 999 F.2d 320, 325 (8th Cir. 1993) (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985)) (other citations omitted). The test for waiver is a “stringent” one, *Hankins v. Finnel*, 964 F.2d 853, 856 (8th Cir. 1992), whereby the waiver “must be stated by the most express language, or, if implied, it must appear by such overwhelming implication from the text as [will] leave no room for any other reasonable construction.” *Id.* (internal quotations and citations omitted).

Applying these principles to the case at bar, the Court concludes that the State of Iowa has not waived its Eleventh Amendment immunity with regard to Plaintiff’s ICRA claims. There is no language in the statute itself which could be construed to

814, 819 (8th Cir. 2000) (noting distinction between agency and individuals with regard to application of equitable relief exception to Eleventh Amendment immunity); *Kane*, 955 F. Supp. at 1125-26 (discussing inapplicability of equitable relief exception where individual state officials not named as defendants).

constitute a clear and express waiver. Although the statute provides for commencement of “an action for relief in the district court” by a person aggrieved by an unfair or discriminatory practice “committed by the state or an agency or political subdivision of the state,” IC § 216.16(1), the term “court” is, significantly, defined elsewhere in the Act as “the district court in and for any judicial district of the state of Iowa . . .” IC § 216.2(3); *see also Kane*, 955 F. Supp. at 1129-30 (discussing this issue). This specific statutory contemplation of a state venue for claims brought under the ICRA against the state – and the absence of any concomitant language suggesting parallel federal jurisdiction – negates any contention of waiver in this instance. *See Angela R.*, 999 F.2d at 325 (the state statute “must specify the State’s intention to subject itself to suit *in federal court*”) (emphasis added) (quotation and citations omitted). *Cf. Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 307 (1990) (finding an express waiver where statute stated that “venue . . . shall be laid within a county or judicial district established by one of said States *or by the United States*, and situated wholly or partially within the Port of New York District”) (emphasis added).

Absent any relevant waiver language in the statute itself, or any other evidence which would “overwhelmingly imply” that Iowa has consented to prosecution of Plaintiff’s ICRA claims in a federal forum, this Court lacks subject matter jurisdiction

over Plaintiff's state-law discrimination claims. Accordingly, Defendant's motion to dismiss Count Two of Plaintiff's claim will be granted. *Accord Kane*, 955 F. Supp. at 1132 (concluding that Eleventh Amendment barred plaintiff's ICRA claims against Iowa Department of Human Services); *Van Pilsum v. Iowa State Univ. of Science and Tech.*, 863 F. Supp. 935 (S.D. Iowa 1994) (holding that the Iowa State Board of Regents and Iowa State University were immune to suit under the ICRA by virtue of the Eleventh Amendment). *See also Walker v. Missouri Dept. of Corrections*, 213 F.3d 1035 (8th Cir. 2000) (dismissing ADA Title I claims against state agency on Eleventh Amendment grounds where no evidence that the state agency consented to suit or waived immunity); *Merrill Lynch, Pierce, Fenner and Smith*, 210 F.3d at 819 (finding Missouri Commission on Human Rights immune to suit by employer seeking to enjoin Commission activities where there was no indication that the state's Eleventh Amendment immunity had somehow been waived or abrogated); *Raper v. Iowa*, 940 F. Supp. 1421, 1426 (S.D. Iowa 1996) (finding language in Iowa Code Chapter 91A insufficient to meet stringent test for Eleventh Amendment waiver where statute authorized venue in "any court of competent jurisdiction" but "there is no indication anywhere in Chapter 91A that a 'court of competent jurisdiction' includes a federal court").

ORDER

For the reasons discussed herein, Defendant's motion to dismiss Count Two of Plaintiff's Complaint, alleging violations of Iowa Code Chapter 216, is Granted.

Done and so ordered this 12th day of November, 2001.

Michael J. Melloy, Judge
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA